



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office

P.O. Box 45155

Salt Lake City, UT 84145-0155

<http://www.blm.gov/ut/st/en.html>



IN REPLY REFER TO:

3809

(UT-9223)

UTU-80521

UTU-88179

FEB 15 2012

CERTIFIED MAIL— 7011 1150 0000 6739 8931

Return Receipt Requested

RECEIVED

FEB 16 2012

DIV. OF OIL, GAS & MINING

Mr. Eugene Hodges

P. O. Box 2311

Beaver, Utah 84713-2311

RE: Blawn No. 1 and Blawn No. 2 lode mining claims

Dear Mr. Hodges:

This letter is in response to your telephone conversation on January 19, 2012, with Mr. Michael Jackson, concerning your Blawn No. 1 and Blawn No. 2 lode mining claims. The telephone conversation referenced proposed mining operations of a possible common variety mineral (Kaolin Clay) and the procedures that the Bureau of Land Management (BLM) must follow in order to make a determination whether the subject material may be mined under the General Mining Law or under the Materials Act of 1947.

In April, 2011, you received a letter from this office, informing you that the BLM had concluded that the subject material may be of a common variety. Information that was provided to the BLM was not considered to be sufficient to conclude that the material was of an uncommon variety. You were given two options, the first to pay the processing fee for a mineral examination report to be prepared by the BLM which would conclude whether or not the subject material was of a common or uncommon variety. The second option was to pay the processing fee for a mineral material appraisal to be completed by the BLM in order to determine the fair-market value of the material so that you could purchase it under a mineral material contract. In May, 2011, you agreed to pay a processing fee in the amount of \$9,180.00 to the BLM so that a mineral material appraisal could be prepared for the subject material. The BLM did not receive payment as was requested; therefore, an appraisal was not initiated.

If you wish to conduct mining operations on the subject claims under the General Mining Law, the only option for you is the first option, that of paying a processing fee so that a mineral examination report can be prepared. We have determined that the estimated cost to prepare the mineral report is \$43,410. We have enclosed a Fee Estimate form and ask that you review the information provided, sign the Fee Estimate and return it to this office at the address listed

above, along with a payment of that amount. If you would like to provide comments on the estimated fee before submitting such funds, you have 30 calendar days to provide comments to this office. The BLM will review your comments and make any adjustments, as necessary. Following the 30 day comment period, unless you have already submitted payment, the BLM will submit a written final fee estimate, accompanied by a bill which will be mailed to you. Once you have received the bill, your payment is due within 30 days.

If we encounter higher costs than anticipated during the preparation of the mineral report, we will send you a request to provide additional monies to the BLM to complete the mineral report. Any of the submitted funds that remain after the mineral report is completed will be returned to you.

Failure to pay the required processing fees within the allotted time shall constitute grounds for rejection of your Plan to conduct mining operations on the Blawn No. 1 and Blawn No. 2 lode mining claims.

Conclusions of Mineral Report

Upon completion of the mineral examination report, as addressed at 43 CFR 3809.101:

1. If the material is determined to be of a common variety, the mining claim will be contested by the BLM, unless the mining claims are relinquished by you.
2. If the final decision by the Department of the Interior is that the mineral is a common variety, the mining claim will be null and void. Any mining-related activity approved as an interim authorization would need to cease and be reclaimed promptly, unless you obtain a sales contract under the BLM's mineral material regulations at 43 CFR 3600.
3. If the final Department decision is that the material is an uncommon variety, then mining will be allowed to continue under the BLM's regulations at 43 CFR 3809.

Mineral Material Contract

If you wish to purchase the product under the Materials Act of 1947, you must request a mineral material sales contract that would allow you to mine the subject mineral deposit. In the event you choose this option, a mineral examination report, along with the associated processing fees would not be required. A mineral material contract would be authorized under the BLM's mineral material disposal regulations at 43 CFR 3600. If you choose this option, please contact this office within 30 calendar days of receiving this letter so that a new cost estimate of the BLM's processing fees to prepare a mineral material appraisal can be calculated and provided to you for your review.

Interim Authorization

You may also request an interim authorization for your Plan, while the mineral examination report is being prepared, as addressed at 43 CFR 3809.101(b)(3). An interim authorization for production will require the establishment of an escrow account between the claimant (or operator) and the BLM. The escrow account requires payments for any removal (mining) of a possible common variety mineral. To determine the value for the escrow payments, a mineral appraisal will also be required. The preparation of an appraisal is also subject to a processing

fee. The processing fee to prepare a mineral appraisal will be provided to you, subject to the date your request for an interim authorization has been received by the BLM.

If you do not pay the processing fees for either of the two options described above, the only activities you may conduct within the subject mining claims are those exploratory activities described in your active Notice, serial number UTU-80521, as permissible under the BLM's surface management regulations at 43 CFR 3809.

Processing Fee Category

The Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701 authorizes Federal Agencies to charge processing costs. The IOAA also states that these charges should pay for the agency services, as much as possible. The BLM also has specific authority to charge fees for processing applications and other documents relating to public lands under Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA) 43 U.S.C. 1734. The IOAA and Section FLPMA authorize the BLM to charge applicants for the cost of processing documents through the issuance of regulations. The final cost recovery rule was published in the Federal Register on October 7, 2005 (70 FR 58854), providing a schedule for fixed fees as well as case-by-case fees. As described at 43 CFR 3800(b), an applicant for any action for which a mineral examination, including a validity examination or a common variety determination, and their associated reports, is performed under §3809.100 or §3809.101 of this part, must pay a processing fee on a case-by-case basis as described in section 3000.11 of this chapter for such examination and report. The BLM must receive such cost recovery fees prior to any further case processing.

If you do not agree and are adversely affected by this decision, in accordance with 43 CFR 3809.804, you may have the Utah BLM State Director review this decision. If you request a State Director review, the request must be received in the Utah BLM State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, no later than 30 calendar days after you receive this decision. The request must be in accordance with the provisions provided in 43 CFR 3809.805. If a State Director review is requested, this decision will remain in effect while the State Director review is pending, unless a stay is granted by the State Director. Standards for obtaining a stay are given below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the Utah State Director does not make a decision on whether to accept your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You then have 30 days in which to file your notice of appeal with the IBLA (see procedures below).

If you wish to bypass the State Director review, this decision may be appealed directly to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Utah State Office, P.O. Box 45155, Salt Lake City, Utah, 84145-0155, within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for

a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

If you have any questions, or require additional information, please feel free to contact me at (801) 539-4037.

Sincerely,



Roger Bankert
Chief, Branch of Minerals

Enclosures

Fee Estimate
Appeals Information
Form 1842-1

cc: Mr. Gary Burningham,
P. O. Box 974,
American Fork, Utah 84003

Utah Division of Oil, Gas and Mining,
1594 West North Temple, Suite 1210,
Salt Lake City, UT 84114-5801

Peck Rock Products, L.L.C.
268 E. 360 S.
Lehi, Utah 84043